

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Bob Fine,		NOTICE OF DETERMINATION OF
	Complainant,	PRIMA FACIE VIOLATION
vs.		AND
Jim Bernstein,		NOTICE OF AND ORDER FOR
	Respondent.	EVIDENTIARY HEARING

TO: Bob Fine, 3932 York Ave. S., Minneapolis, MN 55410 and Jim Bernstein, 5216 Ewing Ave. S., Minneapolis, MN 55410

On November 14, 2005, Bob Fine filed a second Complaint with the Office of Administrative Hearings alleging that Jim Bernstein violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. § 211B.06.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: November 16, 2005

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

The Complainant is currently the Minneapolis Park & Recreation Board Commissioner representing District 6. In the November 8, 2005, general election, he was the incumbent candidate running for re-election and the Respondent was his only opponent. On October 12, 2005, the Complainant filed a complaint with the Office of Administrative Hearings alleging violations of Minn. Stat. §§ 211B.04 and 211B.06 on the part of the Respondent. After a hearing, a panel of three Administrative Law Judges found that the Respondent did violate Minn. Stat. § 211B.06 with respect to certain campaign material and by Order dated November 7, 2005, assessed a civil penalty against the Respondent in the amount of \$800.^[1]

The Complainant has now filed a second complaint alleging additional violations of Minn. Stat. § 211B.06 by the Respondent. Specifically, the Complainant alleges the following: (1) the Respondent placed an advertisement in the October 24, 2005, edition of the *Southwest Journal* newspaper (Exhibit A) that contained the three statements the panel found to be false in its November 7th Order;^[2] (2) the Respondent placed another advertisement in the November 7, 2005, edition of the *Southwest Journal* newspaper (Exhibit B) that contained the three statements the panel found to be false in its November 7th Order;^[3] (3) the Respondent prepared and distributed a campaign flyer (Exhibit C) that contained two of the three statements the panel found to be false;^[4] (4) the Respondent's campaign flyer (Exhibit C) contains the following additional false statements: "consider cuts in wading pools and portable toilets - Yes," "Subvert the fair hiring process to give classmate a job - Yes," and "\$14 million Neiman Sports Complex Began as a \$6 million project, is underused and was built on leased land;" (5) the Respondent violated Minn. Stat. § 211B.06 by failing to include in his campaign flyer (Exhibit C) the complete quote from the *Star Tribune* editorial dated November 2, 2005, (Exhibit D) regarding its decision not to endorse either the Complainant or the Respondent for District 6 Park Board; and (6) the Respondent made the following false statements in a questionnaire "intended to be distributed" by the Children's Advocacy

Network (Exhibit E): “Reducing hours, selling park land, closing facilities are simply not acceptable! My opponent is willing to do those things.”

The Administrative Law Judge concludes that the Complaint alleges prima facie violations of Minn. Stat. § 211B.06 with respect to the statements identified in Exhibits A and B. In fact, the three statements identified in Exhibits A and B are the identical statements found to violate Minn. Stat. § 211B.06 in the panel’s November 7, 2005, Order. In addition, the Complaint alleges prima facie violations of Minn. Stat. § 211B.06 with respect to the two statements identified in Ex. C regarding funding for speedy removal of infected trees and funding and finishing Lake of the Isles restoration. These statements are nearly identical to the statements found by the panel to violate Minn. Stat. § 211B.06 in its November 7, 2005, Order. Therefore, because there has already been a ruling that Respondent violated Minn. Stat. § 211B.06 by preparing and disseminating campaign material that contained the statements identified in Exhibits A, B and C, the only issue for the panel assigned to this matter to consider with respect to these statements is whether the wider distribution of these statements warrants an additional penalty.

The Administrative Law Judge also finds that the Complaint alleges prima facie violations of Minn. Stat. § 211B.06 with respect to the following statements in Exhibit C: “Consider cuts in wading pools and portable toilets - Yes;” and “Subvert the fair hiring process to give classmate a job – Yes.” If the evidence were to establish that the Complainant did not consider cuts in wading pools and portable toilets and in fact voted against such cuts as he has alleged, those facts may be sufficient to establish a violation of Minn. Stat. § 211B.06. Likewise, if the evidence at the hearing were to establish that the Complainant did not “subvert the fair hiring process,” it may be sufficient to establish a violation of Minn. Stat. § 211B.06.

The Administrative Law Judge finds that Complainant has failed to show a prima facie violation of Minn. Stat. § 211B.06 with respect to the following statement in Ex. C: “\$14 million Neiman Sports Complex: Began as a \$6 million project, is underused and was built on leased land.” In order to violate Minn. Stat. § 211B.06, the alleged false statement must relate to the personal or political character or acts of a candidate. This statement is a criticism of a Park Board project. It does not relate to the personal or political character or acts of Mr. Fine, and as such it does not violate Minn. Stat. § 211B.06.

With respect to the *Star Tribune* quote identified in Ex. C, the Administrative Law Judge finds that Respondent’s decision to include only certain sentences from the *Star Tribune* editorial rather than the complete quote did not render the campaign material false. The sentence from the editorial is accurately quoted. It is not a false statement. Using accurate selective quotes from the *Star Tribune* editorial cannot form the basis of a 211B.06 violation. This allegation is dismissed.

The Administrative Law Judge further finds that Respondent has failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to the questionnaire that was “intended to be distributed.” “Campaign material” is defined as “any literature, publication, or material *that is disseminated* for the purpose of influencing voting at a primary or other election, except for news items or editorial

comments by the news media.”^[5] Unless the questionnaire was in fact disseminated, it is not campaign material. The Complaint states only that the questionnaire was intended to be distributed and the Complainant has failed to allege sufficient facts to establish that it was distributed. Complainant’s allegation regarding the questionnaire (Ex. E) does not support a prima facie violation of Minn. Stat. § 211B.06. This allegation is dismissed.

B.J.H.

^[1] *Fine v. Bernstein*, OAH File No. 12-6326-16910-CV (November 7, 2005, Findings, Conclusions and Order). (The panel found the Respondent violated Minn. Stat. § 211B.06 with respect to three statements related to the Lake of the Isles restoration project, an alleged Superintendent slush fund, and funding for speedy removal of trees infected with Dutch Elm disease.)

^[2] *Id.*

^[3] *Id.*

^[4] *Id.* (The statements relate to the Lake of the Isles project and funding for removal of trees infected with Dutch Elm disease.)

^[5] Minn. Stat. § 211B.01, subd. 2 (emphasis added).